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Supreme Court of the United States

OCTOBER TERM, 1975

No. 74-1619

FEDERAL POWER COMMISSION,
Petitioner
v.
THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, ET AL.

No. 74-1608

THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, ET AL.,
Petitioner
v.
FEDERAL POWER COMMISSION

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

BRIEF AMICUS CURIAE OF NATIONAL BLACK MEDIA COALITION NATIONAL COUNCIL OF LA RAZA CHINESE FOR AFFIRMATIVE ACTION

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BRIEF AMICUS CURIAE OF NATIONAL BLACK MEDIA COALITION NATIONAL COUNCIL OF LA RAZA CHINESE FOR AFFIRMATIVE ACTION

National Black Media Coalition, National Council of La Raza and Chinese for Affirmative Action ("Amici") submit this brief in support of the position of the National Association for the Advancement of Colored People, et al. ("NAACP") in this matter. Both parties to this action have given their written consent to the filing of this brief pursuant to Supreme Court Rule 42(1). Copies of the letters of consent of the parties have been lodged with the Clerk of the Court.

INTEREST OF AMICI

Amici do not focus directly upon whether the Federal Power Commission ("FPC") possesses the authority to consider, in conjunction with its regulatory function, the employment practices of its regulatees. We assume this legal issue will be adequately briefed by the parties. Instead, amici believe that the practical experience they have gained from their direct and continuing efforts to assist another federal agency, the Federal Communications Commission ("FCC"), in its six-year old program of monitoring equal employment opportunity ("EEO") in the industries it regulates, would be helpful to this Court in evaluating the argument by the FPC that to consider the EEO practices of its regulatees poses an impractical and unworkable burden.

National Black Media Coalition ("NBMC") is a non-profit organization representing 71 local groups throughout the country who work to improve the broadcast service provided to Black citizens in their communities. To this end, NBMC works with national commercial and public broadcasting entities and local broadcast stations, participates in the FCC's regulatory proceedings, and has submitted extensive pleadings to the FCC on EEO.

The National Council of La Raza is a private, non-profit, non-partisan organization whose goals include pro-

viding technical assistance to Spanish-speaking individuals and Hispanic organizations in several priority areas, including equal employment opportunities for disadvantaged and minority groups. It, like NBMC, has participated in regulatory proceedings before the FCC designed to apply and enforce equal employment policies by the licensees.

Chinese for Affirmative Action ("CAA") is a voluntary civil rights organization dedicated to promoting the civil rights and equal employment rights of the Chinese community in the United States, and particularly in the San Francisco Bay Area. CAA, like the other two amici, has been active before the FCC on EEO matters. It is presently appealing the denial by the FCC of its Petition to Deny the renewal of the license for KCBS, San Francisco, California, in which employment discrimination was one of the primary allegations. It has also filed with the FCC comments on the Commission's EEO regulations and guidelines.

SUMMARY OF ARGUMENT

The FPC and its amici exaggerate without justification the burden which exercise of authority to consider the factor of employment discrimination imposes upon an agency and its regulatees. Since 1968, for example, the FCC has considered in its regulatory proceedings the connection between its duties under the Communications Act of 1934 and the EEO practices of its regulatees, first those of its broadcast licensees, and subsequently, in 1970 and 1972, those of its common carrier and cable regulatees.

Experience reveals that the EEO regulations and guidelines promulgated by the FCC 1) have not imposed a substantial burden on FCC licensees, 2) have not forced an unwarranted displacement of FCC personnel and/or

required the expenditure of massive resources, 3) have not duplicated the efforts of other governmental agencies concerned with EEO and 4) have produced demonstrable gains for women and minorities in the field of broadcasting.

Thus, the "impractical burden" argument advanced by the FPC in support of its categorical denial that it possesses any jurisdiction to consider the EEO practices of its regulatees must be rejected as unsupported conjecture.

ARGUMENT

I. THE FCC HAS ADOPTED AN APPROACH TO CONSIDERATION OF EMPLOYMENT DISCRIMINATION AS A FACTOR IN ITS PROCEEDINGS TAILORED TO ITS SPECIFIC REGULATORY FUNCTIONS.

A. Broadcast Licensees.

In order to award, renew or transfer a broadcast license, the FCC must first find that such action would serve the "public interest, convenience and necessity".[1] The license may be denied where an applicant has violated the laws of the United States, which of course include the equal employment opportunity laws.[2]

The FCC also determined, in adopting its EEO policy in 1968, that discriminatory employment practices conflict with the basic regulatory requirement that a broadcast licensee must ascertain the needs and interests of all segments of the community it serves, including its minority citizens, and meet them with responsive, non-

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[1] E.g., 47 U.S.C. §§ 307(a), 309(a), 310(b).

[2] "The 'public interest, convenience and necessity' standard for the issuance of licenses would seem to imply a requirement that the applicant be law-abiding." *FCC* v. *American Broadcasting Co., Inc.*, 347 U.S. 284, 289 n. 7 (1954).

discriminatory programming.[3] The FCC recognized a close connection between a licensee's exclusion of minority citizens from employment and its ability to effectively carry out its ascertainment and programming functions.[4]

In adopting its EEO regulations for broadcast licensees in 1969, the FCC made it clear that it was concerned with "patterns" of discrimination.[5] Accordingly, its regulations require a policy against discrimination and an affirmative action program for each licensee:

> Each station shall establish, maintain, and carry out, a positive, continuing program of specific practices designed to assure equal opportunity in every aspect of station employment policy and practice . . . 47 C.F.R. §§ 73.125, 73.301, 73.599, 73.680, and 73.793.

The Commission amended its equal employment regulations in 1970 to require that statistical profiles on employment be filed annually with the Commission by each station with five or more full time employees.[6] This statistical report, the 395 form, is substantially identical to the EEO-1 report, which is submitted by all employers with more than 15 employees to the Equal Employment Opportunity Commission ("EEOC").

It is this form, which most if not all FPC regulatees otherwise complete, that cross petitioners NAACP seek to have filed with the FPC. Filing such a form with

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[3] *Office of Communication of United Church of Christ* v. *FCC*, 359 F.2d 994 (D.C. Cir. 1966).

[4] *Nondiscrimination in Employment Practices of Broadcast Licensees*, 13 FCC 2d 766, 770 (1968).

[5] The Commission recognized that positive actions were needed to cope with "general patterns of discrimination developed out of indifference as much as out of outright bias." *Report and Order Re Nondiscrimination in Employment Practices*, 18 FCC 2d 240, 242 (1969).

[6] *Report and Order Re Nondiscrimination in Employment Practices*, 23 FCC 2d 430, 431 (1970).

the FPC and placing a copy thereof in a public file imposes only very minimal burdens on FPC regulatees.

B. Other FCC Regulatees.

Common Carrier and Cable EEO regulations are similar to the EEO regulations for broadcast licensees.[7] In 1970, when the FCC adopted regulations requiring common carriers to follow nondiscriminatory employment practices, it did so in part on a basis similar to that advanced by the NAACP to the FPC in support of its petition for rulemaking:

> [The common carriers] occupy a privileged status by virtue of their monopoly position in their particular areas, and the public is required to do business with them. This unique public interest role makes it particularly important that they not engage in discriminatory employment practices.[8]

II. THE FCC'S CONSIDERATION OF EEO PRACTICES OF ITS LICENSEES IS NOT BURDENSOME OR DUPLICATIVE OF OTHER AGENCIES' EFFORTS.

Several approaches have been devised by federal agencies to effectuate the national policy that equal employment opportunities be afforded every individual irrespective of race, color, religion, sex or national origin.[9] The

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[7] Common Carrier: 47 C.F.R. § 21.307; Cable: 47 C.F.R. §§ 76.13, 76.311, 76.409.

[8] *Employment Practices by Common Carriers*, 24 FCC 2d 725, 726 (1970). The Commission noted similar grounds, in addition to cable's origination of programming, in adopting its Cable EEO rules in 1972. *Discriminatory Employment Practices*, 34 FCC 2d 186, 190-191 (1972).

[9] The approaches taken by the other agencies range from affirmative action requirements to conciliation attempts. For instance, to implement Executive Order 11246, as amended, the Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) has issued regulations requiring federal contractors to (1) under-

FCC has developed an alternative procedure by which it considers EEO practices as a factor in its own proceedings. Moreover, the Commission had adopted a wide spectrum of alternatives to remedy discriminatory practices which fall short of denial of a license or commencement of a court action.

A. EEO Consideration Is Simplified by the Filing of an Annual EEO Form.

In 1969, the FCC's Renewal and Transfer Division of its Broadcast Bureau began to review applications for license renewal and transfer, as part of its normal processing function, to determine whether broadcast licensees had complied with the FCC's EEO, as well as with its other, regulations. The 1970 requirement that each licensee with five or more full-time employees submit the 395 form annually made this process simpler and more objective for both the Commission and the licensees.

In August, 1972 the FCC implemented a monitoring and review standard whereby any licensee with ten or more full-time employees would receive a letter of inquiry regarding its employment practices if (1) there was either a decline in the number of women employees or there were no women listed between form 395 filing periods; and (2) minorities comprised more than five percent of the population and there was either a de-

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take a "utilization analysis" to evaluate incumbent minority and female representation vis-a-vis the available minority and female work force; (2) implement an affirmative action program for each company facility; and (3) submit an annual report detailing the results of the program. The EEOC, whose thrust is conciliation, has authority to receive complaints of employment discrimination, investigate facts and determine whether there is "reasonable cause" to believe the charge to be true. It may also seek court-ordered remedies through injunction, back pay awards, reinstitution or hiring of employees, or other appropriate equitable relief. As noted *infra*, many FCC regulatees are within the jurisdiction of neither agency.

cline in minority employees or there were no minority employees between form 395 reporting periods.

These two minimal criteria have been, since then, the basic standard used by the Broadcast, as well as the Common Carrier and Cable Bureau, to determine whether additional inquiry is warranted. Under this standard ". . . the Commission during the past three years, has sent out over 600 letters of inquiry to licensees which represents approximately 30 per cent of the licensees which come within the monitoring criteria." [10]

With regard to common carriers, the Commission explained why consideration of EEO practices would not create undue delay or unreasonable administrative burdens:

> We have considered this problem and have drafted our rules so as to minimize any additional burden to the Commission. Our annual employment reports are designed to be subdivided into computerized data which can then be programmed for retrieval, to provide a variety of "profile" statistics regarding utilization of minority group and female employees within each company or the industry as a whole. Use of this computerized data will relieve the administrative burden which might otherwise result from processing such annual employment reports.[11]

B. Employment Complaints Represent A Small Percentage of the Complaints Filed With the Commission.

Outside the FCC's own monitoring standard described above, complaints of employment discrimination come

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[10] Remarks of FCC Commissioner Benjamin L. Hooks, before the National Association of Broadcasters, San Francisco, California (November 24, 1975).

[11] *Employment Practices by Common Carriers, supra* note 8, 24 FCC 2d at 727.

to the FCC typically in the form of a letter alleging an individual complaint or in a "Petition to Deny" a license alleging a pattern of discriminatory employment practices. The mechanism by which the two are handled is quite different, although neither method poses a burden to the FCC or its licensees.

1. ***Individual Complaints of Employment Discrimination.***

An individual complaint of discrimination is referred to the FCC's Complaints and Compliance Division. If the letter alleges discrimination in very vague terms, the complainant is asked for more specific information. If the complainant fails to send more specific information, no further action is taken. If the complainant gives sufficient information on which to substantiate the allegation of discrimination, that letter is followed by a letter to the respondent licensee who is asked to comment. Under normal circumstances, the letter is referred to the EEOC or an appropriate state or local agency.

The FCC Complaints and Compliance Division conducts an independent field investigation *only* in the following situations:

(1) The EEOC does not have jurisdiction *and* the complaint presents a substantial question of fact and the complainant has exhausted state and local remedies;

(2) There is a particularly egregious violation; [12]

(3) EEO violations are one of several issues for which the licensee is under investigation.

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[12] *See, e.g., Bob Jones University*, 42 FCC 2d 522 (1973).

In the past six years, the Complaints and Compliance Division has undertaken only 12 field investigations of employment discrimination.[13]

In 1974, 96,710 "complaints, comments and inquiries" were sent to the FCC, of which only 299 concerned employment discrimination.[14] Thus, only a very small percentage of complaints handled by the Complaints and Compliance Division are EEO related.[15] *The FCC has not, therefore, been inundated with employment discrimination complaints as a result of its adoption of rules with respect to EEO.* This conclusion is particularly important to demonstrate how unsubstantiated is the FPC "impractical burden" argument.

2. *Complaints Alleging Patterns of Employment Discrimination.*

Where it is alleged in a "Petition to Deny" that the licensee is engaged in a "pattern" of employment discrimination, the Renewal and Transfer Division reviews the license application to determine if it comports with the standard approved by the U.S. Court of Appeals for the District of Columbia Circuit in *Stone* v. *FCC*, 466 F.2d 316 (1972), i.e., does the licensee's employment profile come within a "zone of reasonableness,"

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[13] About 50 field investigations are done each year for violation of all FCC rules. This and the following information were supplied to counsel for amici by the FCC.

[14] Discrimination based on race, color, or national origin:

AM	89
FM	45
TV	75

Discrimination based on sex:

AM	39
FM	19
TV	32

[15] Of the 96,710 "complaints, comments and inquiries," 12,000 were related to sex in programming, 9,000 concerned crime and violence; 5,700 concerned program changes, preemptions, etc.; and 7,000 concerned news distortion.

particularly in light of the licensee's affirmative action program?

The D.C. Circuit again in 1974 approved the FCC's policy of not holding a full evidentiary hearing unless facts were alleged showing both (1) a statistical disparity between the percentage of minorities or women in the local community and (2) the absence of an active policy of including minorities and women within the licensee's recruitment, training and promotion efforts. *Bilingual Bicultural Coalition of Mass Media* v. *FCC*, 492 F.2d 656 (1974).

Where the FCC has considered allegations of a pattern of employment discrimination it has invariably done so solely on the filed papers. And not once since it began considering charges of a pattern of employment discrimination has the FCC designated a hearing solely on that issue alone. Hence the FPC's fears that it would have to hold a myriad of EEO hearings are unwarranted.

C. Voluntary Citizen Monitoring of Licensee EEO Practices Reduces the FCC's Burden, And Does Not Lead to Protracted Hearings.

The hypothetical "impractical burden" alleged by the FPC is considerably lessened if it were, like the FCC, to rely on individual citizens or citizen groups with specific and personal knowledge of discriminatory employment practices to bring those practices to the attention of the FPC.

Since 1969, numerous "Petitions to Deny" have been filed against licensing applications by citizens groups, many of which brought to the FCC specific information about employment discrimination. Of those, only four have been designated for full evidentiary hearing.[16]

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[16] *Alabama Educational Television Commission*, 33 FCC 2d 495, 513 (1972); *Leflore Broadcasting Co., Inc.*, 46 FCC 2d 980 (1974)

The primary reason why protracted licensing hearings are so seldom necessary is that there are a broad range of more focused regulatory tools available to the FCC to deal with complaints of patterns of discrimination. On the basis of such complaints from the local community the FCC can impose fines,[17] renew the license for less than the full three year term[18] (during which the licensee would be subject to monitoring and review procedures with respect to its employment practices), or renew licenses conditionally and require the licensee to submit a list of community sources for job referrals for minorities and women and to report periodically on the results of recruitment efforts.[19] The FCC has also placed some licensees on "deferred" status until it received more detailed information as to their employment profile and affirmative action efforts.[20]

According to FCC Chairman Richard E. Wiley, 163 licenses have been conditionally renewed since 1972.[21] Many of the cases involving deferral or conditional or

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(Greenwood, Mississippi); *Rust Communications Group, Inc.*, 53 FCC 2d 355 (1975) (Rochester, New York); *New Mexico Broadcasting Co.*, 54 FCC 2d 126 (1975) (Albuquerque, New Mexico).

[17] 47 U.S.C. §§ 502, 503.

[18] 47 U.S.C. § 307(d). See *Bob Jones University, Inc., supra* note 12, 42 FCC 2d at 525.

[19] See, e.g., *Inquiry Into the Employment Policies and Practices of Certain Broadcast Stations Located in Florida*, 44 FCC 2d 735 (1974).

[20] See, e.g., *1972 License Renewal Applicants for 28 Broadcast Facilities Licensed to the Philadelphia, Pa. Area*, 53 FCC 2d 104 (1975).

[21] Testimony of Richard E. Wiley, Hearings on FCC Deregulation, Subcommittee on Communications, Senate Committee on Commerce, 94th Cong. 1st Sess. 14 (Nov. 11, 1975) ("FCC Deregulation Hearings").

short-term renewal have resulted from information brought to the FCC by local citizen groups.

Citizen group participation in the renewal process has therefore not raised frivolous claims, nor has it "impaired" the FCC's ability to carry out its regulatory function.[22]

It is only reasonable to assume that the FPC, were it to adopt some procedure for considering employment discrimination, would have equally few full-scale hearings at which EEO would be a factor.

Moreover, the almost prohibitively high cost of participating in an agency regulatory process also works to ensure that the FPC will not be deluged, as it seems to believe, by hordes of individuals or groups claiming that a regulatee is a demonstrated discriminator. As the District of Columbia Circuit noted in *Office of Communication of the United Church of Christ* v. *FCC*, 359 F.2d 994, 1005 (1966) only those "willing to shoulder the burdensome and costly processes of intervention in a Commission proceeding are likely to be the . . . ones 'having a sufficient interest' to challenge a renewal application."

Finally, many violations of the FCC's EEO regulations never even reach the FCC because of efforts between citizen groups and licensees to work together to eliminate the objected to employment practices. Yet such meaningful dialogue on employment practices would not be possible were the FCC to state categorically, as the

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[22] In fact, the FCC in 1973 amended its rules by changing the deadline for filing license renewal applications from 90 days prior to expiration to four months before that date in order to ". . . provide community groups interested in the performance of local stations with ample time to examine renewal applications, to discuss any problems with licensees, and, if desired, to file timely petitions to deny." *Renewal of Broadcast Licenses, Final Report and Order* (Docket 19153), 38 Fed. Reg. 28761, 28768 (October 16, 1973).

FPC has done, that allegations that a licensee is a discriminator are irrelevant to its regulatory function.

There is no reason to assume that similar salutary effects would not also result from discussions between a FPC regulatee and those it serves. Yet should this Court vindicate the FPC's assertion that it lacks jurisdiction to consider the costs of discriminatory practices and that even the most egregious patterns of employment discrimination have no bearing whatsoever on its regulatory functions, regulatees who are demonstrated discriminators will have little incentive to self-reform.

D. Consideration of EEO Has Not Displaced FCC Personnel or Resources.

In 1973, the FCC established an Industry EEO Unit in the General Counsel's Office.[23] The FCC also has EEO processing units in the Broadcast, Common Carrier and Cable Television Bureaus. Total staffing for these four units is six. The Industry EEO Unit has two EEO experts. The Broadcast Bureau has three EEO specialists and the Common Carrier Bureau one (the Cable Bureau does not have a specific EEO specialist). These individuals came to the FCC with backgrounds in EEO from working with federal and/or State and local EEO agencies that provide a large pool of expertise in this field.

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[23] The function of the FCC Industry EEO Unit is to develop and administer in coordination with the Broadcast, Cable Television and Common Carrier Bureaus, an EEO program for industries regulated by those Bureaus; to assure consistency of EEO plans and their success in achieving the objectives of the program; to recommend such changes in the program as may be appropriate; and to maintain liaison with those who are subject to EEO plans and with State and local agencies, community groups, and industry associations which are concerned with the provision of EEO. See 47 C.F.R. § 0.41(p).

The FCC projects spending a total of only $400,000 on its total EEO staff and review functions in Fiscal Year 1976, less than 1% of its total budget.[24]

E. The FCC's Efforts Are Not Duplicative Of Those of Other Agencies And the Sanctions It Applies Differ From Those of The Courts or Other Agencies.

In commenting in the FCC's first rulemaking proceeding on EEO in 1968 the Justice Department explained why the FCC efforts would not duplicate the efforts of the EEOC:

> Title VII was not intended to circumscribe the authority of the Federal agencies other than the Equal Employment Opportunity Commission to regulate employment practices . . . EEOC's primary function is to attempt to conciliate complaints of alleged discrimination. It has no cease-and-desist power, its investigative resources are very limited, and it has a large backlog of complaints which it has not yet been able to investigate.[25]

While the Congress gave the EEOC greater enforcement authority in 1972, the EEOC still has no jurisdiction over employers with fewer than 15 employees. Approximately 80% of the FCC's broadcast licensees have 14 or fewer employees. Moreover, there is still an enormous back-log at the EEOC.

As shown above, the FCC possesses many alternative regulatory tools for dealing with employment discrimination as a factor in its own proceedings not available to the EEOC. Assuming a citizen group were able to convince the FPC that the regulatee was a demonstrated discriminator in its employment regulations, the sole

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[24] Superintendent of Documents, *Special Analyses, Budget of the United States Government*, Fiscal Year 1976, at 214 (1975).

[25] *Nondiscrimination in Employment Practices of Broadcast Licensees, supra* note 4, 13 FCC 2d at 776-77.

remedy is not, as the FPC seems to envision, denial of the rate increase or of the license application. Clearly there are less draconian remedies available.

For instance, the FPC could disallow that portion of the costs associated with the employment discrimination. Or if the discrimination were found in connection with an application for a license, the Commission could request that the applicant undertake certain steps to eliminate the discrimination. This could include suggesting the applicant increase recruiting efforts at schools with significant minority populations, and asking for additional periodic reporting on its EEO efforts, as the FCC does.

III. MEASURABLE GAINS FOR WOMEN AND MINORITIES STEM FROM THE FCC'S EEO REGULATIONS.

The Civil Rights Act of 1964 enunciated the national policy against employment discrimination. Between 1964 and 1969 there was no significant increase in minority and female employment by FCC licensees. However, with the promulgation of the FCC rules in 1969 there was a marked improvement in the employment profiles of its regulatees. Even prior to a coordinated review mechanism being set up and separately staffed at the FCC in 1973, there was a positive change. Therefore, mere promulgation of the rules was an impetus to FCC licensees and permittees to afford equal employment opportunities.

Chairman Wiley has stated that FCC "efforts in this [EEO] area have contributed . . . to a clear improvement of minority and female employment." [26] The statistics compiled by the FCC of minority and female employment in the broadcasting industry from 1971 (the

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[26] Testimony, *FCC Deregulation Hearings, supra* note 21, at 14.

first year for which data has been compiled) to 1974, released in April, 1975 (see Appendix A), support the inference of a slow, steady increase on an overall industry basis.

The sentiment expressed by Chairman Wiley has been echoed by the National Association of Broadcasters (NAB), the principal trade association of radio and television broadcasters and networks:

> The NAB shares the Commission's desire to eliminate all employment practices, be they active or passive, which discriminates [sic] on the basis of race, color, religion, sex or national origin . . . NAB believes the Commission, under the Communications Act of 1934, has the specific obligation to protect the public interest and included therein is the necessary determination that each regulatee has not violated the national policy against employment discrimination.[27]

The broadcasting industry finds even more significance in the statistics for managerial, professional and sales positions than in the overall employment figures. According to the FCC tabulation, while in 1971, of full time officials and managers, only 8.9% were female and 4.6% were minorities, by 1975 those figures had increased to 14.4% and 6.2% respectively. The NAB observed:

> "Also during that short period, professional staff positions had an increase in female and minority full-time employees from 10.1% and 8.0% to 15% and 10.9% respectively. Women in sales increased from 8.5% to 13.9% and minorities in office/clerical increased from 12.7% to 18.7%." [28]

In view of the dismal record of employers in general, and FCC licensees in particular, before and since the

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[27] NAB Comments, FCC Docket 20550, *Nondiscrimination in Employment Policies and Practices of Broadcast Licensees*, p. 1, 7 (October 14, 1975).

[28] *Id.* at 2.

passage of the Civil Rights Act of 1964, it is doubtful that without the FCC EEO rules, women and minorities would, as the NAB puts it, ". . . have come a long way in such a short period of time. . . . Each year, in increasing numbers, females and minorities are participating in all levels of broadcast management." [29]

Another salutary benefit derived from FCC promulgation of rules is that there is now a clearer standard by which an FCC-regulated company can measure its own performance and to which it can turn for guidance. In addition, Ashton R. Hardy, FCC General Counsel, suggests that a further benefit which the EEO rules afford the licensee is:

> . . . a chance to add new talent and new creativity to your [licensee] business and community . . . Discrimination, no matter how subtly practiced, creates an undercurrent of antagonism and bad will in the hearts and minds of those discriminated against and it morally takes something away from those who discriminate.

FCC licensees, he said, should

> . . . consider maintaining nondiscriminatory hiring practices as a moral obligation which all of you owe to your communities, and, more importantly, to yourselves . . . *All you need do is to make sure that women and minorities have an equal opportunity to be hired for such positions when vacancies occur.*[30] (Emphasis added.)

As Commissioner Hooks has so aptly stated, "It is time to get on with the business of providing equal employment opportunity to women and minorities, not only in the communications industry, but in all areas of the

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[29] *Ibid.*

[30] Address of Ashton R. Hardy before the Oregon Association of Broadcasters, Eugene, Oregon (November 13, 1975) at 12-13.

employment sphere. Enough time has been wasted, and enough talent." [31]

CONCLUSION

For the above reasons, amici submit that the contentions of the FPC as to the impractical burdens of the decision below are belied by the six year experience of the FCC in this area. Not only have the EEO regulations not been an "impractical burden", but they have demonstrably benefitted both minorities and women. Moreover, the general public has benefitted as the services provided by the FCC regulatees begin to reflect more closely the population. Finally, the regulated industries themselves have benefitted by a greater utilization of talent available to them on a nondiscriminatory basis. Accordingly, amici urge this Court to adopt the position of the NAACP herein.

Respectfully submitted,

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[31] Testimony of Commissioner Benjamin L. Hooks, FCC Deregulation Hearings, *supra* note 21, at 9.

APPENDIX

APPENDIX A

Federal Communications Commission
NEWS 1919 M Street, N.W. [SEAL]
Washington, D.C. 20554

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April 7, 1975—B

More Women and Minorities in Higher Broadcasting Jobs, FCC Reports

A new FCC tabulation of 1974 employment in the broadcasting industry shows both women and minorities are increasingly represented in higher-pay full-time jobs.

Of the 30,244 full-time women employees, 10,907 or 36 percent are in higher pay categories (including official and manager, professional, technician, sales and skilled craftsmen), and of 13,891 members of minority groups 8,739 or 63 percent are in such full-time jobs.

The new tabulation of full-time employees shows women held 14.4 percent of the "official and manager" positions, 15.0 percent of the "professional" jobs, 13.9 percent of those in "sales", 2.8 percent of "technicians" and 89.3 percent of the "office and clerical" posts.

Minority group persons held 6.2 percent of the positions in the "official and managers" category, 10.9 percent of the "professionals", 6.2 percent of the "sales", 10.7 percent of the "technicians" and 18.7 percent of the "office and clerical".

The report gives the number of full-time employees in nine major job categories who are women and mi-

norities, with breakdowns into categories of Negro, Oriental, American Indian and Spanish-speaking Americans.

There are separate listings for commercial television, commercial radio, noncommercial television and noncommercial radio, including all stations with five or more full-time employees in 1974.

Comparisons also are made with the employment profiles for each of the three previous years in every job category. In addition to the national totals, there are separate tabulations for each state.

The tabulation is available for inspection in the FCC's public reference room (Room 239), at 1919 M Street, N.W., Washington, D.C. The individual radio and television station reports (FCC Form 395) also are available for inspection there.

—FCC—

Attachments

EMPLOYMENT TRENDS IN THE BROADCAST INDUSTRY BY JOB CATEGORY: FULL TIME EMPLOYEES BY SEX AND MINORITY GROUP: 1971-1974

United States
National Totals

Job Category			Total Emplys	Total Female	Total Males	Total Minor	Female Minorities				Male Minorities			
							Negro	Orient	Americ Indian	Spansh Americ	Negro	Orient	Americ Indian	Spansh Americ
Officials & Mgrs	NR	1974	23,333	3,359	19,974	1,447	218	29	25	83	514	91	82	405
	% Total	1974	100.0	14.4	85.6	6.2	0.9	0.1	0.1	0.4	2.2	0.4	0.4	1.7
	% Total	1973	100.0	12.5	87.5	5.7	0.8	0.1	0.1	0.3	2.2	0.3	0.3	1.7
	% Total	1972	100.0	10.2	89.8	5.1	0.5	0.1	0.1	0.2	1.9	0.2	0.4	1.8
	% Total	1971	100.0	8.9	91.1	4.6	0.4	0.1	0.0	0.1	1.8	0.2	0.3	1.7
Professionals	NR	1974	33,071	4,950	28,121	3,611	556	69	27	126	1,762	105	138	828
	% Total	1974	100.0	15.0	85.0	10.9	1.7	0.2	0.1	0.4	5.3	0.3	0.4	2.5
	% Total	1973	100.0	12.9	87.1	10.0	1.3	0.2	0.1	0.3	5.2	0.3	0.3	2.3
	% Total	1972	100.0	9.7	90.3	8.7	0.9	0.1	0.0	0.3	4.7	0.3	0.3	2.1
	% Total	1971	100.0	10.1	89.9	8.0	0.9	0.1	0.0	0.2	4.5	0.2	0.3	1.8
Technicians	NR	1974	23,393	659	22,734	2,507	92	10	8	22	1,359	154	69	798
	% Total	1974	100.0	2.8	97.2	10.7	0.4	0.0	0.0	0.1	5.8	0.7	0.3	3.4
	% Total	1973	100.0	2.1	97.9	9.9	0.2	0.0	0.0	0.1	5.2	0.6	0.4	3.3
	% Total	1972	100.0	1.4	98.6	8.8	0.1	0.0	0.0	0.1	4.4	0.5	0.3	3.3
	% Total	1971	100.0	1.5	98.5	8.1	0.1	0.0	0.0	0.0	3.9	0.5	0.3	3.1
Sales Workers	NR	1974	12,572	1,745	10,827	774	64	19	11	30	376	26	37	211
	% Total	1974	100.0	13.9	86.1	6.2	0.5	0.2	0.1	0.2	3.0	0.2	0.3	1.7
	% Total	1973	100.0	11.3	88.7	6.0	0.4	0.1	0.1	0.2	2.8	0.2	0.4	1.7
	% Total	1972	100.0	8.8	91.2	5.1	0.2	0.1	0.0	0.2	2.4	0.2	0.4	1.6
	% Total	1971	100.0	8.5	91.5	5.1	0.2	0.1	0.1	0.1	2.5	0.2	0.4	1.6
Office/Clerical	NR	1974	21,248	18,985	2,263	3,974	2,144	242	92	804	442	56	15	179
	% Total	1974	100.0	89.3	10.7	18.7	10.1	1.1	0.4	3.8	2.1	0.3	0.1	0.8
	% Total	1973	100.0	89.4	10.6	17.1	9.1	0.9	0.5	3.3	2.1	0.3	0.0	0.8
	% Total	1972	100.0	88.3	11.4	14.5	7.3	0.7	0.4	3.1	2.0	0.1	0.0	0.8
	% Total	1971	100.0	88.3	11.7	12.7	6.5	0.6	0.3	2.5	1.9	0.1	0.0	0.7
Craftsmen	NR	1974	2,874	194	2,680	400	18	1	2	11	211	15	15	126
	% Total	1974	100.0	6.8	93.2	13.9	0.6	0.0	0.1	0.4	7.3	0.6	0.5	4.4
	% Total	1973	100.0	5.3	94.7	12.9	0.6	0.0	0.0	0.2	6.9	0.5	0.5	4.1
	% Total	1972	100.0	5.5	94.5	11.8	0.4	0.0	0.0	0.2	7.0	0.4	0.5	3.2
	% Total	1971	100.0	5.3	94.7	10.8	0.4	0.0	0.0	0.2	6.3	0.4	0.5	2.9

EMPLOYMENT TRENDS IN THE BROADCAST INDUSTRY BY JOB CATEGORY: FULL TIME EMPLOYEES BY SEX AND MINORITY GROUP: 1971-1974

United States

National Totals

Job Category			Total Emplys	Total Female	Total Males	Total Minor	Female Minorities				Male Minorities			
							Negro	Orient	Americ Indian	Spansh Americ	Negro	Orient	Americ Indian	Spansh Americ
Operatives	NR	1974	1,543	136	1,407	333	16	2	1	5	208	11	8	82
	% Total	1974	100.0	8.8	91.2	21.6	1.0	0.1	0.1	0.3	13.5	0.7	0.5	5.3
	% Total	1973	100.0	7.0	93.0	20.4	0.7	0.1	0.0	0.2	12.8	0.7	0.7	5.2
	% Total	1972	100.0	4.1	95.9	18.3	0.6	0.0	0.0	0.2	11.1	0.5	0.5	5.4
	% Total	1971	100.0	5.4	94.6	15.1	0.4	0.0	0.0	0.2	9.6	0.4	0.3	4.3
Laborers	NR	1974	261	16	245	128	3	0	0	1	90	2	1	31
	% Total	1974	100.0	6.1	93.9	49.0	1.1	0.0	0.0	0.4	34.5	0.8	0.4	11.5
	% Total	1973	100.0	6.0	94.0	44.0	2.1	0.0	0.3	0.6	27.1	0.6	0.6	12.8
	% Total	1972	100.0	10.4	89.6	46.0	4.5	0.0	0.0	1.3	27.2	1.0	0.6	11.3
	% Total	1971	100.0	5.7	94.3	39.5	2.9	0.0	0.0	0.5	25.2	0.7	0.2	10.0
Service	NR	1974	1,291	200	1,091	717	109	0	0	7	507	6	4	84
	% Total	1974	100.0	15.5	84.5	55.5	8.4	0.0	0.0	0.5	39.3	0.5	0.3	6.5
	% Total	1973	100.0	15.7	84.3	54.0	7.3	0.1	0.1	0.7	39.2	0.3	0.2	6.2
	% Total	1972	100.0	15.1	84.9	53.3	6.5	0.0	0.0	0.9	38.9	0.4	0.0	6.6
	% Total	1971	100.0	13.6	86.4	54.1	7.0	0.0	0.1	0.3	40.4	0.4	0.3	5.6
Total All Jobs	NR	1974	119,586	30,244	89,342	13,891	3,220	372	161	1,089	5,469	467	369	2,744
	% Total	1974	100.0	25.3	74.7	11.6	2.7	0.3	0.1	0.9	4.6	0.4	0.3	2.3
	% Total	1973	100.0	24.1	75.9	10.9	2.4	0.3	0.1	0.8	4.5	0.4	0.3	2.2
	% Total	1972	100.0	23.2	76.8	9.8	1.9	0.2	0.1	0.8	4.1	0.3	0.3	2.2
	% Total	1971	100.0	23.3	76.7	9.1	1.7	0.2	0.1	0.6	3.9	0.3	0.3	2.0